

## **Response to Law Commission Consultation on changes to the Landlord and Tenant Act 1954 (Business Tenancies 1)**

### **Response from the Office of the Pubs Code Adjudicator (PCA)**

#### **The Pubs Code and Pubs Code Adjudicator**

1. The Pubs Code Adjudicator (PCA) is the independent regulator responsible for enforcing the statutory Pubs Code ([The Pubs Code etc. Regulations 2016](#)). Parliament introduced the Pubs Code to address the imbalance of power in the business relationship between the largest tied pub-owning businesses (POBs) and their tied tenants. A tied tenant is one who is contractually obliged to purchase some or all of their alcohol from their landlord. The tied pub model operates by the tied tenant paying above market prices for their alcohol (the wet rent) in exchange for a below market rent (the dry rent). They may also receive special commercial and financial advantages from their pub company. Unusually for a commercial tenancy, in many cases a pub tenancy also provides the tenant and their family with a home at the pub. This is worthy of note when considering legislative amendments.
2. For many years serious concerns had been raised to Parliamentary Select Committees about the relationship between large pub companies and their tenants. The Final Impact Assessment noted repeated reports of delay in opening rent review negotiations, lack of transparency in such negotiations, failure to carry out repairs agreed when a tenancy began, verbal agreements being ignored, and of harassment of tenants when they were vulnerable through bereavement. Such problems were considered to occur due to inequalities of bargaining power in these business contracts. The Pubs Code is based on two core statutory principles that (a) there should be fair and lawful dealing by POBs in relation to their tied pub tenants, and (b) those tenants should be no worse off than if they were free of tie.
3. The Pubs Code provides tied pub tenants of those pub companies with more than 500 tied pubs in England and Wales with various rights and protections. These include the right to receive information from their POB at key junctures, such as before taking on or renewing a tenancy and when negotiating the rent. Other rights include the option for the tenant to price match the premises insurance and to have written notes of business discussions with their POB. The Pubs Code legislation also introduced a new statutory right for tied pub tenants, where certain circumstances arise, to break the tie with their landlord by taking the Market Rent Only (MRO) option.

4. As the independent regulator, the PCA seeks to support this consultation by (i) providing outline information on how Pubs Code processes interact with the 1954 Act; (ii) signposting to evidence which may help assess potential impacts of contemplated amendments, including as they might interact with the Pubs Code; and (iii) illustrations of the use of 1954 Act protection within the regulated tied pub trade.
5. The Pubs Code does not regulate against the 1954 Act. It includes references to the 1954 Act to ensure that procedures under the Pubs Code work alongside the statutory rights given to protected tenants. The Pubs Code also provides rights at contractual renewal, but these are not identical in all respects to those at statutory review, and the number of agreements with contractual renewal rights is very low. Significant amendments to the 1954 Act may create a need for amendments to the Pubs Code to be considered.
6. The PCA regulates by enforcing compliance with the existing legislation. It seeks to ensure that the Pubs Code affords effective protections to tied tenants, including in its interplay between the 1954 Act, and that there is balance in the tied business relationship. Given the potential impact on the tied pub market of changes to the 1954 Act, the PCA would recommend that, as proposals are considered and developed, further consideration be given to assessing the impact of any proposed changes on the tied pub industry and the Pubs Code. The PCA would be pleased to provide further and more detailed information to the Law Commission if required and would be happy to meet with the Law Commission to discuss the complex interactions between the Pubs Code and the 1954 Act.
7. The PCA does not seek to advocate for a particular legislative approach. For this reason, and because the PCA does not fit any of the permitted categories of respondent to the survey, it has opted to submit its consultation response, including some of the available data, by email rather than using the online form.

### **The Market Rent Only Option**

8. Under the Pubs Code a tied tenant has the right at certain gateways (including at statutory or contractual renewal) to request an offer of a free of tie tenancy which is MRO-compliant (the “Market Rent Only” or MRO option) and to then choose whether to accept that option to trade free of tie. The MRO right represents a significant intervention in the market, in that it empowers the tied tenant at specified points in the tenancy to change the fundamental nature of the contract with their landlord. The ability of the tied

tenant by these means to (i) compare the tied and free of tie options, (ii) negotiate on the tied and/or free of tie terms, and (iii) choose the option that is best for their business, is important to the delivery of Parliament's "no worse off" principle.

9. Under an MRO-compliant tenancy, a tenant is free to buy alcohol and other products and services on the open market and will pay an agreed rent for the premises (or, failing such agreement, a market rent). The terms of the MRO-compliant tenancy must be reasonable. Except where the gateway to MRO is renewal, the MRO-compliant tenancy must be for a period that is at least as long as the remaining term of the existing tied tenancy. Where the existing tenancy is 1954 Act protected, the proposed MRO tenancy must, in all cases, also be protected under the 1954 Act. The Pubs Code specifically provides different timetables within the MRO process to allow for the service of a s.25 or s.26 notice under the 1954 Act and an application to court to determine the terms of a new tenancy.

### **Pubs Code interactions with Statutory Renewal Rights**

10. The Pubs Code does not operate to improve on the statutory renewal rights protected tenants may enjoy. In addition to the MRO rights specifically operating at statutory (as well as contractual) renewal, in providing rights for tied pub tenants, the Pubs Code reflects the protections they may have under the 1954 Act in a number of ways. For example, the Pubs Code provides rights to protected tenants at statutory renewal, including the right to request a rent proposal from their POB. This is an analysed and evidenced rent offer which must be based on reasonable trading assumptions. This information can support the tenant in rent negotiations and business planning.
11. The Pubs Code also places obligations on the POB to provide information consistent with any renewal right. This includes the duty, where the tenancy offered is a protected 1954 Act tenancy, to provide pre-tenancy information to the negotiating tenant on the process for renewal.

### **Protected tenancies in the tied pub trade**

12. The pub trade is a unique sector. A small number of pub companies control a large number of tied pubs. There are currently around 8,000 tied pubs owned by six pub companies which are regulated under the Pubs Code. The PCA collects data is available as to the number of the tied agreements regulated by the Code which are protected business tenancies pursuant to the 1954 Act.

13. Regulated POBs have a statutory obligation to provide an annual compliance report to the PCA. These reports are published online on their individual company websites. Compliance report data shows that across the regulated industry, the proportion of agreements with 1954 Act protection has declined. For example, on 31 March 2020 38% of regulated agreements were protected, compared with 31% on 31 March 2024. Similarly, the proportion of new tied tenancies that have 1954 Act protection has decreased, from 13% in the year April 2020 to March 2021 to 2.1% for the year April 2023 to March 2024. New tied tenancies include new short agreements.
14. These trends may at least in part be a response to the introduction of the Code and the MRO right. It should be understood that underlying this data there are significant individual variations between the POBs, which have different appetites towards the grant of long leases with statutory protection (usually with full repairing and insuring liability on the tenant and a right to assign). These longer leases are more likely to attract tenant investment in the pub. Most regulated pub companies have moved to favour shorter agreements (with tenancies of 3-5 years in duration with shared repairing liabilities which are opted-out of statutory protection), as well as other types of pub operating agreements (such as franchises and management models). The reduction in the number of protected tenancies of regulated tied pubs may be an indication of a lack of commercial negotiating strength on the part of prospective tied pub tenant, though it may also reflect some tenant preference for shorter agreements.
15. The 8th annual Pub Governing Body report audited pub company signatories to a voluntary code (who operate up to 500 tied pubs and are therefore not covered by the Pubs Code) for the period August 2023 to July 2024. Of 2,194 substantive tied agreements, 78% were 1954 Act protected. The remaining 22% were unprotected agreements. This suggests a much higher rate of 1954 Act protection of tied pubs outside the regulated industry.
16. There is very limited use in the regulated tied pub trade of tenancies whose terms provide a contractual right to renew. This fact, together with the market position of the regulated pub companies, and data on the number of protected tenancies, may suggest that the prospective tied pub tenant has limited commercial negotiating strength in this market to secure either contractual or statutory renewal rights.
17. The PCA would also reference the Secretary of State's reports on the two statutory reviews of the operation of the Pubs Code (for the periods ending [31 March 2019](#) and [31 March 2022](#)). The latter includes data on pub ownership /

tenure models. These reports contain comment from witnesses, and findings from the Secretary of State, about the impact the Pubs Code has had on the market, and the changes seen in agreement types and opt-outs from 1954 Act protection within the regulated tied pub market. Whilst it is difficult to predict, it could be expected that there would be tied pub market changes in response to any amendment to or abolition of the 1954 Act, driven by the commercial interests of POBs, including in their use of various other agreement types.

18. Against the background presented above, the PCA provides the following responses to the consultation questions:

**Question 1 - We invite consultees to tell us about any particular considerations or experiences in Wales, which consultees think are relevant to potential reform to the model or scope of security of tenure in Wales.**

19. The Pubs Code regulates the relationships between large pub owning businesses and their tied tenants in England and Wales. As such, our responses below relating to the interplay of the 1954 Act and the Pubs Code apply equally to Wales as to England.

**Question 2 - We invite consultees' views as to which model of statutory security of tenure they consider should operate, along with the reasons for their choice of model: (1) mandatory security of tenure; (2) no statutory security of tenure (abolition); (3) contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme); or (4) contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model)**

20. The aim of the PCA's consultation response is to inform the Law Commission of the purpose and operation of the Code and the potential impact of the proposed changes, rather than to advocate for a particular legislative approach.

**Question 3 - We invite consultees' views, together with evidence wherever possible, as to what impact a change to the model of security of tenure will have:**

**(1) on the parties to tenancies and their advisors**

Option 1 - Mandatory Security of Tenure

21. Mandatory security of tenure would (but for growth in the use of alternative forms of agreement) increase the number of protected tenancies in the regulated tied pub market, which is in decline. It would therefore be likely to give more tied tenants the right to request the MRO option and, if they wish, choose to trade free of tie. Any such increase would also be likely to provide such tenants with greater negotiating strength in relation to the tied terms and rent at renewal. That the tied tenant at renewal has the right to choose to go free of tie provides an incentive for the POB to deliver on Parliament's intention that they should be treated fairly and lawfully by their POB in their tied tenancy and be no worse off than if they were free of tie.
22. Mandatory security of tenure may therefore support the delivery of Parliament's intention in effecting the Code by increasing incentives on the POB and strengthening the commercial hand of the tenant. It could also provide greater protection from a refusal by the landlord to renew where the tenant has exercised the right to go MRO or otherwise sought to assert their Pubs Code rights during the tied tenancy.

#### Option 2 - Abolition of Security of Tenure

23. The impact of removing security of tenure may affect the balance of power in pub tenancy negotiations on new tenancies and at the end of the term, in which the tied trading terms and rent are also at play.
24. Owing to the interaction between statutory renewal rights and certain Pubs Code rights, the abolition of security of tenure would render some parts of the Code redundant and may necessitate a variation to the procedures within the Pubs Code legislation, including in relation to the MRO procedure. The removal or reduction of 1954 Act protected tenancies would be associated with a reduction in tied tenants' access to the MRO option. This may be both because there would be fewer gateways at which the right to MRO would arise, and because tenants may be less likely to exercise their MRO right at mid-term rent review for fear that they would have no protection against a POB's decision not to renew an MRO tenancy at its end.
25. The tenant would be less likely to be able to make the commercial decision to exercise their MRO right to have greater control over and invest in their property. This could be seen as impacting on the delivery of the 'no worse off' principle, and the converse of points outlined in respect of Option 1 could apply. Protection against detriment for exercise of MRO rights (which is prohibited under the Code) could be harder to monitor should security of tenure be abolished.

### Options 3 and 4 - Contracting in/Contracting out of the 1954 Act

26. The 'Contracting-in Model' is not too dissimilar to the present 'Contracting-out Model' - both require commercial agreement between landlord and tenant prior to the tenancy being entered and the tenant cannot compel the landlord either way. While removing default security of tenure by introducing a 'Contracting-in' model might create a more simplified system, in the context of the regulated tied pub trade it would not necessarily result in greater fairness in the tied relationship.
27. Those majority of POBs which currently typically contract out of the 1954 Act may be considered unlikely to agree to contract into statutory protection. Many prospective tied tenants of the POBs in the market do not appear to have sufficient negotiating strength to obtain statutory or contractual renewal rights. Some multiple operators may have more ability to influence the outcome of negotiations over tenancy terms. Such operators may seek security of tenure to support their investment strategies.

### **(2) on the commercial leasehold market.**

#### Option 1 - Mandatory Security of Tenure

28. The changes in agreement types used by the regulated pub companies since the introduction of the Pubs Code may evidence a willingness to innovate in the market where legislative change operates to restrict the pub company's freedom to choose how to use its commercial property. It may be conceivable that mandatory protection could result in changes by POBs to their agreements, where they may wish to retain flexibility to manage their tenanted properties, with altered business models or a move towards alternative agreement types which offer lower security to a pub operator compared to a tenancy. However, it is very difficult to accurately predict likely behaviours of the pub companies in response to such a change.

#### Option 2 - Abolition of Security of Tenure

29. Whilst the abolition of security of tenure would not prevent the parties from agreeing a contractual right to renew, an understanding of the regulated tied pub trade and the range of agreements within it may help to assess the likelihood that the POBs would do so in significant numbers. The tied pub trade is a sector in which the imbalance of power between the largest pub-owning businesses and their tied tenant was such that Parliament considered it required regulation to protect those tenants from unfair treatment. The PCA

is therefore mindful that reductions in the protections available to tied pub tenants pursuant to the 1954 Act may serve to impact the balance of power that Parliament has sought to effect by providing rights and protections under the Pubs Code.

Options 3 and 4 - Contracting in/Contracting out of the 1954 Act

30. There has already been an identified reduction in statutory renewal rights in the regulated tied pub trade, which commentators may consider reflect POBs' power in the negotiation of a new business relationship. The reduction in protected long leases may already be impacting on the number of tied tenants who have the right to request an MRO option. Parliament provided this right so that there would be greater balance in the tied pub business relationship and to further its intention that tied tenants should be no worse off than if they were free of tie. It is unclear that this market trend would be different under a contracting in regime.

**Question 4 – We invite consultees' views as to whether the existing scope of the 1954 Act is appropriate. In particular, we invite consultees' views as to whether:**

- (1) the extent of the Use Excluded Tenancies is appropriate;**
- (2) the extent of the Duration Excluded Tenancies is appropriate; and**
- (3) there are other types of business tenancy (or business tenancies with certain characteristics) that should be excluded from the scope of the 1954 Act.**

**We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended**

31. The Pubs Code and the 1954 Act are not competing regimes. The PCA works to promote and enforce the Pubs Code legislation as currently drafted, including in its interplay with 1954 Act rights. The forthcoming statutory review of the Pubs Code, for the 3-year period ending 31 March 2025, provides an opportunity for stakeholders to provide evidence as to the effectiveness of the Code, including in that interplay, which may be relevant to the Law Commission's work. The PCA has provided information about the possible impact of proposals on the regulated tied pub trade, which we consider merits particular consideration.



**Question 5 - we invite consultees' views as to whether our assessment of the potential benefits and disadvantages of reforming the scope of the 1954 Act is correct.**

32. The PCA has no comment as to the correctness of the potential benefits and disadvantages of reforming the scope of the 1954 Act. However, we have set out some of the possible impacts in relation to the interplay with the Pubs Code.

**Question 6 - We invite consultees' views, together with evidence wherever possible, as to what impact a change to the scope of the 1954 Act would have:**

**(1) on the parties to tenancies and their advisors;**

33. The duration of a compliant MRO proposal must be at least as long as the remaining term of the existing tied tenancy. It must offer statutory protection where the current tied tenancy is protected. Were there to be a change to exempt tenancies of longer duration (say, under 5 years) from statutory protection, it is possible that there could be friction with the MRO option (where, for example, a lessee requests the MRO option at a point at which there is less than 5 years remaining on the term of the protected tied agreement). Were the bar changed, and tenancies of a different duration or type included within the ambit of the 1954 Act, some inconsistency with the Code may result which could give rise to the need to consider its amendment.

34. That tied pub tenancies often provide both a business opportunity and a home may be a matter for consideration in assessing the impact of including more tenancies in excluded categories. Detailed consideration of the tied pub trade may be warranted in developing proposals.

**(2) on the commercial leasehold market.**

35. The PCA has referred, above, to the data collected in the annual POB compliance reports which may assist in understanding their estates. Most POBs offering tied tenancies already favour shorter opted-out agreements. This is a complex and innovative market, with changing business models and emerging agreement types. The PCA recommends further detailed consideration of the impact of a change in scope of the legislation on the tied pub market once specific proposals are identified.

**Question 7 - We invite consultees to tell us if they believe, or have evidence or data to suggest, that changes to the model of security of tenure, or the scope of the 1954 Act, could result in advantages or disadvantages to certain groups or to individuals based on certain characteristics (with particular attention to**

**age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation**

36. The PCA has no comment to make regarding changes to the model of security of tenure or scope of the Act in relation to groups or individuals with protected characteristics. However, in its annual tied tenant survey it does collect limited demographic data of a sample of 1,200 tied pub tenants (15% of the regulated industry). The 2024 survey results can be viewed [here](#).

Pubs Code Adjudicator, 19 February 2025